

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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date: December 08, 2010

to:

(Large Business & International)

from: James Coffey Gibbons  
Branch Chief  
(Procedure & Administration)

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subject: CCA Request POSTF-117060-10

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

**Issues:**

1. Is Taxpayer's refund claim filed timely under either section 6511(d)(3)(A) or 6511(d)(2)(A), where the claim results from a carryback of foreign tax credits (FTCs) from , which in turn resulted from a net operating loss (NOL) carryback from to , which NOL was generated by a timely election to claim deductions rather than credits for foreign income taxes paid or accrued in ?
2. Does Taxpayer's Protective Claim ( PC) filed in constitute an election within Treas. Reg. §1.901-1(d) and IRC §901(a) and subject to §6511(d)(3)(A) to claim credits rather than deductions for foreign income taxes paid or accrued in , effectively reversing the election made in to convert previously-claimed FTCs to deductions?
3. Is Taxpayer's PC a valid protective claim in general? If so, should the Service delay action on the claim pending final disposition of the cycle?

**Conclusions:**

1. No. IRC §6511(d)(3)(A) governs the applicable refund period, since the refund claim is “attributable to” a claimed credit for foreign income taxes paid or accrued in [redacted] and carried back to [redacted]. Since the refund claim was filed more than 10 years after the due date (without extensions) of Taxpayer’s [redacted] tax return, the claim is untimely. Moreover, even if the refund claim were considered to relate to the NOL carryback from [redacted] that freed up the [redacted] FTCs, the claim would be untimely under IRC §6511(d)(2)(A) since it was filed more than three years after the due date (including extensions) of the return for [redacted], the year in which the NOL carryback arose. Taxpayer has not cited any authority in support of its attenuated argument that the refund claim relates to an overpayment “attributable to” foreign income taxes paid in [redacted].

2. No. The [redacted] PC does not constitute a final election to claim credits rather than deductions, for foreign income taxes paid or accrued in [redacted], and was ineffective to extend the statutory deadline for Taxpayer to make this choice.

3. No. The [redacted] PC is not a valid protective claim in general. It does not contain a claim that is contingent. It merely informs the Service that Taxpayer wants to reserve the right to make a claim in the future.

**Facts:**Carrybacks of NOLs and FTCs

In [redacted], Taxpayer filed a Form 1120X, Amended U.S. Corporation Income Tax Return, for the taxable year [redacted] to change its election from credits under IRC §901 to deductions under IRC §164(a)(3) for foreign income taxes paid or accrued in [redacted]. The [redacted] Form 1120X generated no refund for taxable year [redacted]. Instead, Taxpayer stated that the effect of the change in election was to increase the [redacted] NOL by \$ [redacted]. The [redacted] Form 1120X was dated [redacted], and was posted at the IRS Service Center on [redacted].

In [redacted], Taxpayer filed a Form 1120X for taxable year [redacted] in which the increased NOL generated by the [redacted] Form 1120X was carried back and allocated to respective subgroups, subject to limitations per Treas. Reg. § 1.1502-21. After limitation, \$ [redacted] was available to be carried back, and of that amount, \$ [redacted] was utilized to reduce [redacted] taxable income to [redacted]. This utilization of NOL carrybacks freed up FTCs for foreign income taxes paid or accrued in [redacted] that were originally utilized in [redacted]. The [redacted] Form 1120X generated no refund for that year. The [redacted] Form 1120X was dated [redacted], and was posted at the IRS Service Center on [redacted].

Around the same time, Taxpayer filed a Form 1120X for the taxable year \_\_\_\_\_ in which the "freed up" FTCs totaling \$ \_\_\_\_\_ were carried back to generate a requested refund of \$ \_\_\_\_\_. Taxpayer cited section 6511(d)(3)(A) as authority for the requested refund. The \_\_\_\_\_ Form 1120X was dated \_\_\_\_\_, and was posted at the IRS Service Center on \_\_\_\_\_.

### Protective Claim

Taxpayer then filed a Form 1120X for taxable year \_\_\_\_\_ with the label "Protective Claim" on the front. The \_\_\_\_\_ PC had no numbers on the face of the return and requested "\_\_\_\_\_" refund. The \_\_\_\_\_ PC was dated \_\_\_\_\_. There is no posting date on the IRS' Integrated Data Retrieval System (IDRS) per the BMFOL transcript for the \_\_\_\_\_ PC.

On Part II, Explanation of Changes, Taxpayer stated that "[t]he purpose of this amended return is to attach a protective election only. This election is being made to protect Taxpayer's right to claim the effect of foreign taxes as a credit for the year \_\_\_\_\_. This election is not immediately effective and does not now replace a prior election to deduct such foreign taxes. Rather effectiveness will be contingent on future events which will not occur with the period of limitations."

Attached to the \_\_\_\_\_ PC, Taxpayer provided the following statement:

In accordance with Treas. Reg. § 1.901-1(d), a **protective election only** is made for the taxable year \_\_\_\_\_ to claim the benefits of a credit for foreign taxes paid or accrued under Section 901 of the Internal Revenue Code for that year. This protective election is made within the period prescribed by Treas. Reg. § 1.901-1(d) and Section 6511(d)(3)(A).

This election is **protective only**. On \_\_\_\_\_ Taxpayer made an election to claim as a deduction under Section 164(b)(3), the total foreign taxes paid or accrued and to reduce the total income by Section 78 Gross-up amounts previously reported for the tax year ended \_\_\_\_\_ and filed refund claims to affected years resulting from that election. Those claims and other years which would affect the advisability of electing a deduction or credit for the \_\_\_\_\_ foreign taxes are currently under or still subject to examination by the Internal Revenue Service. Because those examinations are not completed, and will not be completed by the period prescribed in Treas. Reg. § 1.901-1(d) and Section 6511(d)(3)(A), this protective election should not be given effect pending the conclusion and resolution of the examination. Only at that time, dependent upon a final determination of the income tax liabilities for several years, can it be finally determined whether the previous election

(for deduction treatment under section 164(b)(3) or this election (for credit treatment under section 901) should be given effect.

The amount of allowable credits and support therefore, have previously been provided.

Taxpayer Statement, attached to PC.

### Relevant Dates

The due date of the tax return, without extensions, was .

The ten-year period for filing a claim for refund attributable to foreign income taxes paid or accrued in under IRC §6511(d)(3)(A), or for changing the election to claim a credit or deduction for such taxes in accordance with IRC §901, expired on , ten years after the due date (without extension) of the return.

The periods of limitation for assessment or refund, as extended by agreement under IRC § 6501(c)(4) and 6511(c), for the relevant taxable years are as follows:

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### **Law and Analysis:**

1. What is the applicable period of limitation for filing a claim for refund for arising from FTCs carried back from to , which were freed up by an NOL carried back from to , which in turn arose from a timely change in election to deduct rather than credit foreign income taxes paid or accrued in ?

#### **A. Limitation Periods in General**

The limitation periods for filing claims for refund are set out in IRC §6511. Under IRC §6511(a), the general period of limitation for a credit or refund is three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. There are special rules extending the periods of limitation for various situations, however, including special rules for NOLs and FTCs. The special rules for NOLs and FTCs are found in IRC §6511(d)(2) and 6511(d)(3), respectively.

IRC §6511(d)(2)(A) provides that if any claim for refund “relates to an overpayment attributable to an [NOL] carryback,” then the limitation period shall instead be “that period which extends three years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the NOL that resulted in the carryback.” IRC §6511(d)(2)(B) provides that if the allowance of a refund of an overpayment of tax attributable to an NOL is otherwise prevented by the operation of any law or rule of law other than IRC §7122 (relating to compromises), such refund may be allowed or made, if the claim is filed within the period provided in IRC §6511(d)(2)(A).

IRC §6511(d)(3)(A) provides that, if a claim for refund “relates to an overpayment attributable to any taxes paid or accrued to any foreign country for which a credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901,” in lieu of the three-year period prescribed in section (a), “the period shall be ten years from the date prescribed by law for filing the return for the year in which such taxes were actually paid or accrued.”<sup>1</sup> Treas. Reg. §301.6511(d)-3(a) confirms that for purposes of the FTC 10-year refund statute, the due date of the return is determined without regard to extensions. *Compare* IRC §§6511(d)(2)(A) and 6511(d)(3)(A).

#### B. Cascading Carrybacks: Instigating Event v. Independent Examination

As noted, IRC §6511(d)(3)(A) applies to determine the applicable refund period for claims relating to an overpayment of U.S. tax “attributable to” foreign taxes “for which credit is allowed” under §901. IRC §6511(d)(3)(A) and the regulations thereunder specify that the period is ten years from the return deadline (without extensions) for the year in which the foreign taxes were actually paid or accrued. IRC §6511(d)(2)(A) provides that a claim for refund relating to an overpayment “attributable to” an NOL carryback is three years from the return deadline (including extensions) for the year in which the NOL arose.

As a result of the Taxpayer’s timely election to deduct, rather than credit, foreign taxes paid or accrued in the increased NOL was carried back to ,

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<sup>1</sup> IRC §6511(d)(3)(A) was amended in 1997, effective for foreign taxes paid or accrued in taxable years beginning after August 5, 1997. Prior to amendment, the statute provided that the period was 10 years from the date prescribed by law for filing the return “for the year with respect to which the claim is made” instead of the current language of “for the year in which such taxes were actually paid or accrued.” Pub.L. 105-34, § 1056(a). The amendment was enacted to clarify that the limitations period attributable to refund claims that result from foreign tax credit carryovers runs from the due date of the return for the year in which the foreign taxes were paid or accrued, and not the earlier or later year to which the foreign taxes were carried and claimed as a credit. H.R.Rep. 105-220, 105 Cong. 1<sup>st</sup> Sess. (July 30, 1997) at 576-577. The amendment reversed the result in Ampex Corp. v. United States, 620 F.2d 853 (Ct.Cl. 1980), which held that the period ran from the carryover year. The Service does not follow the Ampex decision.

which freed up FTCs for foreign taxes paid or accrued in \_\_\_\_\_, which the Taxpayer seeks to carry back to \_\_\_\_\_. Under a plain reading of IRC §6511(d)(3)(A), taking an independent examination of the \_\_\_\_\_ refund claim, the claim was untimely, because the claimed overpayment is in the most direct sense attributable to credits for foreign taxes paid or accrued in \_\_\_\_\_, which were carried back and claimed as a credit in \_\_\_\_\_. The ten-year period for claiming a credit or refund attributable to foreign taxes paid or accrued in \_\_\_\_\_ expired on \_\_\_\_\_, two years before the \_\_\_\_\_ refund claim was filed.<sup>2</sup>

Rev. Rul. 71-533, 1971-2 C.B. 413, addressed the interaction of the NOL and FTC refund statutes in a case similar to that presented here. The taxpayer in the ruling incurred an NOL in 1969 that was carried back to reduce its taxable income in 1966 to zero. The NOL carryback freed up foreign taxes paid or accrued in 1966, which the taxpayer sought to carry back and claim as a foreign tax credit in 1964. The ruling concludes that the applicable refund statute is the FTC refund statute of IRC §6511(d)(3)(A), not the NOL refund statute of IRC §6511(d)(2)(A). The analysis underlying the ruling is equally applicable here. But even if the \_\_\_\_\_ refund claim were considered to be “attributable to” the NOL carried back from \_\_\_\_\_, rather than to the FTCs carried back from \_\_\_\_\_, the \_\_\_\_\_ refund claim was untimely, because under IRC §6511(d)(2)(A) the refund period for claims attributable to the \_\_\_\_\_ NOL expired on \_\_\_\_\_, three years from the due date of the return for \_\_\_\_\_, and \_\_\_\_\_ years before the \_\_\_\_\_ refund claim was filed.

However, a refund claim for any year attributable to foreign taxes paid or accrued in \_\_\_\_\_ could be made at any point up to and including \_\_\_\_\_. Therefore, if the \_\_\_\_\_ refund claim for excess FTCs carried back from \_\_\_\_\_ can be considered attributable to the \_\_\_\_\_ foreign taxes, that claim would be timely under IRC §6511(d)(3)(A). For this argument to succeed, all of the cascading carrybacks would have to be deemed to be “attributable to” the \_\_\_\_\_ foreign taxes, so that the IRC §6511(d)(3)(A) period for refund claims attributable to the \_\_\_\_\_ foreign taxes serves to extend the limitation periods for the \_\_\_\_\_ claim, based on the cascading \_\_\_\_\_ NOL and \_\_\_\_\_ FTCs. This approach would effectively look through the adjustment to the character of the instigating event, which in this instance is the deduction for foreign taxes paid or accrued in \_\_\_\_\_.

### C. Prior Analysis

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<sup>2</sup> Under the Claims Court’s opinion in Ampex, described in note 1 above, interpreting the prior version of IRC §6511(d)(3) that applied with respect to foreign taxes paid or accrued in 1997 and earlier years, the refund period for a \_\_\_\_\_ claim based on FTC carrybacks from \_\_\_\_\_ would have expired two years earlier, on \_\_\_\_\_.

Although this exact issue has not been addressed, similar issues have been considered administratively.<sup>3</sup> Judicial decisions that address similar issues are discussed briefly herein.

### Judicial Decisions

Although limitations statutes barring the collection of taxes must be strictly construed in favor of the government, Badaracco v. Comm'r, 464 U.S. 386 (1984), the few courts that have addressed this issue have favored the instigating event approach.

The Tax Court has defined “attributable to” to mean “traced directly to.” Herman Bennet Co. v. Comm'r, 65 T.C. 506, 510 (1975) (allowing an otherwise untimely refund for 1963 because a timely 1969 NOL carryback to 1966 released a previously allowed investment credit); see also Braunstein v. Comm'r, 374 U.S. 65, 70 (1963) (defining “attributable to” as “caused or generated by”).

In First Chicago Corp. v. Comm'r, 742 F.2d 1102 (7th Cir. 1984), the Seventh Circuit adopted the instigating event approach when determining the effect of capital loss and investment credit carrybacks on the Service’s ability to assess an otherwise untimely deficiency. Specifically, the appellate court reversed a Tax Court decision, 80 T.C. 648 (1983), and adopted the dissenters’ position that “the reduction in the carryover amount of taxpayer’s 1971 income tax to 1972 was ‘attributable to the application to the taxpayer of the 1974 capital loss and investment credit carrybacks, both of which were effective to reduce its 1971 tax liability and to result in a 1972 deficiency.’” First Chicago, 742 F.2d at 1103. The adopted Tax Court dissenting opinion held that any deficiency that could be traced back to the carryback would be “attributable to” that carryback. First Chicago, 80 T.C. at 665. The Tax Court dissenters had relied on specific language in the legislative history of the refund claim procedure to determine that the Commissioner should “recompute every tax, including those of any prior year affected by the carryback.” Id. at 667.

The Southern District of Iowa also adopted the instigating event approach when it faced similar issues in Marshalltown Savings & Loan Ass’n v. United States, 92-1 USTC P50, 100 (S.D. Iowa 1991). In Marshalltown, the taxpayer filed a Form 1139 and a Form 1120X for 1980, based on the carryback of a net operating loss from 1985 to 1979, and a resultant carryforward of investment tax credits from 1979 to 1980. The court held that, although the general refund limitations period had expired for 1980, the taxpayer’s refund claim was timely under IRC §6511(d)(2) because the overpayment was

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<sup>3</sup> The Service has considered similar issues on several occasions in written, nonprecedential, fact specific advice but has not taken a position with respect to the issues in any formal guidance. Chief Counsel Advice and Field Service advice are nonprecedential and should not be relied upon by either taxpayers or the Service. We note, however, that factual variations in the existing CCAs and FSAs, and the potentially inconsistent results that may not be readily identifiable, demonstrate hazards that should be considered when dealing with this case.

attributable to the 1985 NOL carryback. As the instigating event was the 1985 NOL carryback, the limitation period for that carryback was to be used for all the cascading results.

#### D. Current Analysis

The issue of which limitations period is applicable when there are cascading NOL and FTC carrybacks is unsettled, which has caused the Service's analysis to be somewhat inconsistent in the past. Although the courts that have addressed this issue have tended to follow the instigating event approach, the only decision that we have identified that actually deals with the effect on refunds – as opposed to assessments – is an unpublished Order from the Southern District of Iowa. See Marshalltown, 92-1 USTC P50, 100. Thus, the issue is not yet settled. Under the instigating event approach, claims would be timely if they could be traced, however remotely, to any attribute in another year that could directly give rise to a refund claim, even if the statute were closed with respect to the attribute directly claimed on the amended return. In our view, the better interpretation is that the need for certainty and finality dictates an interpretation in which each carryback is looked at individually, and the applicable statute is that relating to the proximate cause of the claim.

2. Does Taxpayer's Protective Claim ( PC) filed in constitute an election within Treas. Reg. §1.901-1(d) and IRC §901(a) subject to §6511(d)(3)(A) to claim credits rather than deductions for foreign income taxes paid or accrued in thus reversing the election made in to convert previously-claimed FTCs to deductions?

Section 901(a) provides that, for any taxable year, a taxpayer may make or change an election to claim credits or deductions for foreign income taxes paid or accrued at any time before the expiration of the period prescribed for making a claim for credit or refund of U.S. tax for such taxable year. Treas. Reg. §1.901-1(d) clarifies that the applicable refund period is the 10-year period prescribed by IRC §6511(d)(3)(A), rather than the three-year period prescribed by IRC §6511(a). Thus, the applicable deadline for making or changing an election to credit or deduct creditable foreign taxes is ten years from the due date of the return (without extensions) for the year in which the foreign taxes are paid or accrued.

In , Taxpayer filed a Form 1120X for the taxable year to change its election from credits under IRC §901 to deductions under IRC §164(a)(3) for its foreign taxes paid or accrued in . The Form 1120X was dated , and was posted at the IRS Service Center on . The due date of the

tax return, without extensions, was . Because the ten-year period under IRC § 6511(d)(3)(A) would have expired on , ten years after the due date (without extensions) of the return, this election was timely made.



On \_\_\_\_\_, Taxpayer executed a Form 1120X for taxable year \_\_\_\_\_ with the label "Protective Claim" on the front of the form. The \_\_\_\_\_ PC, which was dated \_\_\_\_\_,<sup>4</sup> purports to amend its \_\_\_\_\_ return to "claim the effect of foreign taxes as a credit for the year \_\_\_\_\_," but, according to the attached statement, "is not immediately effective and does not now replace a prior election to deduct such foreign taxes." The statement provides that the \_\_\_\_\_ PC was not intended to be effective until the completion of all examinations by the Internal Revenue Service of "other years which would affect the advisability of electing a deduction or credit for the \_\_\_\_\_ foreign taxes...." Only at the "conclusion and resolution of the examination [sic], ... [d]ependent upon a final determination of the income tax liabilities for several years, can it be finally determined whether the previous \_\_\_\_\_] election... or this election... should be given effect." Finally, according to the statement, "[t]he amount of allowable credits and support... have previously been provided."

The \_\_\_\_\_ PC was signed on \_\_\_\_\_. For purposes of this analysis, it will be assumed that it was filed before the expiration of the applicable ten-year election period under IRC §901(a) for foreign taxes paid or accrued in \_\_\_\_\_, which was \_\_\_\_\_. Since the \_\_\_\_\_ PC is later in time than the \_\_\_\_\_ election to change from FTCs to deductions for \_\_\_\_\_, the \_\_\_\_\_ PC generally would supersede the election, but only if the \_\_\_\_\_ PC was a valid election under Treas. Reg. §1.901-1(d).

However, by filing the \_\_\_\_\_ PC Taxpayer did not elect to claim credits for foreign taxes paid or accrued in \_\_\_\_\_. To the contrary, the \_\_\_\_\_ PC expressly states that Taxpayer did not intend at that time to change its previous election to deduct, rather than credit, foreign taxes paid or accrued in \_\_\_\_\_. Indeed, Taxpayer continues to press its claim that the \_\_\_\_\_ foreign tax deductions gave rise to an NOL that in turn gave rise to its disputed \_\_\_\_\_ refund claim. Rather than reflecting a timely change in election, the \_\_\_\_\_ PC reflects Taxpayer's attempt unilaterally to extend the statutory deadline for changing its election provided in IRC §901(a), which expired on \_\_\_\_\_. Thus, the \_\_\_\_\_ PC does not supersede the Taxpayer's last timely election, made in \_\_\_\_\_, to convert previously-claimed FTCs to deductions for \_\_\_\_\_, and the time for Taxpayer to make further changes to its choice has now expired.

In Chrysler Corporation v. Commissioner, 436 F.3d 644 (6<sup>th</sup> Cir. 2006), the court affirmed the Tax Court's holding that the taxpayer's attempt to change its election from deductions to credits was untimely because it was made more than 10 years after the due date of the return for the year in which the foreign taxes were paid or accrued. The court rejected the taxpayer's argument that the election period should be construed to run from the later year to which the taxpayer sought to carry forward excess foreign taxes from the election year. Noting that the taxpayer retained the benefit of deductions for the foreign taxes, and that statutes granting deductions should be construed strictly in favor of the government, the court held that the plain meaning of IRC §901(a)

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<sup>4</sup> There is no posting date on the IRS' IDRS for the \_\_\_\_\_ PC.

establishes a 10-year window for the taxpayer to choose between credits and deductions for foreign taxes paid. In this case, the Taxpayer's 10-year window expired on . Taxpayer's attempt indefinitely to extend the statutory 10-year period by filing the PC on that date was ineffective.

3. Is Taxpayer's PC a valid protective claim generally? If so, should the Service delay action on the claim pending final disposition of the cycle?

The concept of a "protective claim" is not used in the Code or regulations, but is established by case law. A valid protective claim need not state a particular dollar amount or demand an immediate refund; however, the claim must have a written component; must identify and describe the contingencies affecting the claim; must be sufficiently clear and definite to alert the Service as to the essential nature of the claim; and must identify a specific year or years for which a refund is sought. See, e.g., United States v. Kales, 314 U.S. 186 (1941). A protective claim is a present claim contingent upon a future event; it is a statement that upon the happening of the contingency the claim will be prosecuted. The delay in resolving the contingency does not create any inconsistency with the present assertion of the claim. See Kales, 314 U.S. at 196. A claim cannot be viewed as a protective claim merely because a taxpayer labels it as such.

In general, a protective claim is based on an expected change in the tax law, other legislation, regulations, or case law. Taxpayers seeking certain determinations from the Service or another tax authority also may submit protective claims while the determination is pending. See Pala, Inc. Employees Profit Sharing Plan and Trust Agreement, 234 F.3d 873, 880 (8th Cir. 2000) (The court stated the taxpayer could have filed a protective claim while the Service was considering a request for a determination that a plan was qualified as a tax-exempt profit sharing plan). For example, a taxpayer requesting assistance from the U.S. competent authority under the provisions of an income, estate, or gift tax treaty to which the United States is a party is advised to file a protective claim (along with their related parties) before the expiration of the period of limitations. See Rev. Proc. 2006-54 at section 9. Also, an estate that has not paid certain claims or expenses at the time the estate return is filed may file a protective claim for refund under Treas. Reg. § 20.2053-1(d)(5)(i). See also Rev. Rul. 77-274, 1977-2 C.B. 326 providing that where a suit for damages for wrongful death has been filed, but there has been no recovery at the time the return is filed, the fiduciary is advised to file a protective claim for refund.

As indicated above, a protective claim for refund is recognized by the Service and the courts as a method of filing a claim satisfying IRC §6402 within the applicable period of limitation even though the taxpayer's right to make the claim is presently contingent and must await resolution of a pending enactment or determination to fully establish the taxpayer's right. That is, a valid protective claim contains a present claim that the Service may immediately allow or disallow once the contingency is resolved. In this case Taxpayer's PC is a writing, but it does not make a present claim or even

identify a year or years for which a refund is sought. Taxpayer stated that only after the conclusion of the examination of other, unidentified years will it know whether or not it wants to change its foreign tax election for        and whether or for what years it might then file a refund claim. The pending examinations of other years, however, did not prevent Taxpayer from making an IRC §901 election for the        taxable year. The examination is not similar to the request for a determination that was pending with the Service in Pala, Inc. In this case Taxpayer could have made an election for the taxable year instead of filing the        PC. In fact, Taxpayer previously did make the election but then revoked it via Form 1120X in        . Also, the        PC does not present the IRC §901 election as an alternative to the deduction under section 164 that would come into effect upon the resolution of a contingency regarding the tax year. The        PC contains no present claim to be allowed or disallowed immediately upon the completion of an examination; it only informs the Service of a course of action Taxpayer may or may not take after the examination of various unspecified years are concluded, which may or may not give rise to a refund claim in other years. In contrast to making a present claim, Taxpayer is attempting to reserve the right to make a claim based on a change to its IRC §901 election for        if the results of the examination of other years later show it would be beneficial. The PC lacks the elements required for a valid protective refund claim.

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Please call 202-622-4910 if you have any further questions.